

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

DIRECTIONS FOR POSTING PROPERTY BONDS

These are directions for posting bonds secured by real or personal property for the release of criminal defendants in this judicial district. Although any judge may waive some of these requirements or impose different ones, these should be followed unless they are specifically amended in a given case.

It is important to remember that the objective of the documentation is merely to demonstrate that the United States has a valid lien on equity at least equaling the amount of the bond. This requires: 1) evidence of ownership; 2) evidence of the value of the equity; and 3) documents establishing the lien.

I. REAL PROPERTY

1. Evidence of ownership. We require an attorney's certificate of title showing the current owners to be the persons posting the bond. A full 60 year title search is not required so long as the beginning point is some event at which the title would have been determined, such as a substantial bona fide deed of trust to a commercial lender or the acquisition of title by a buyer for value (as opposed to a bequest or gift). Of course, this certificate must disclose all prior liens and deeds of trusts.

2. Evidence of value. The value of the equity is the fair market value of the property less the present balance of any prior liens. We recognize that the tax value of property is generally less than the fair market value and so if the tax value is enough to show the equity to equal or exceed the bond amount, we will generally accept a certification of the tax value. Otherwise, we will need an appraisal by a licensed real estate appraiser showing the fair market value of the property. We also need a statement of the present balances of any liens. This may be provided either by: the lienholder, on its letterhead, or by the attorney in the certificate of title.

3. Lien Documents. In North Carolina, liens on real property are created by deeds of trust. The trustee must be our Clerk of Court, Dennis P. Iavarone and the beneficiary must be the United States of America. The deed of trust should be executed by the surety and if applicable, the surety's spouse. If applicable, the deed of trust should include an Hypothecation Agreement as an exhibit to the deed of trust, demonstrating that non-surety titled owners have agreed to encumber the property. If the property is held in trust, then prior to recordation, the surety must record a Certification of Trust.

The instrument which the deed of trust secures is our appearance bond, not a promissory note, and the language in the deed of trust should refer to the bond as the obligation it secures. A violation of the appearance bond must constitute a default of the deed of trust. While we do not require a promissory note with the deed of trust, many real property practitioners find it easier to cancel the deed of trust of record later if they have a promissory note, marked

cancelled. If you prepare a promissory note it should also refer to the obligations in the appearance bond. The deed of trust must be recorded and mailed to the clerk after recordation. If the Clerk is a junior lienholder, then subsequent to recordation, the surety should record a "Request for Notice" with the Register of Deeds ensuring that the Clerk is notified of foreclosure on the property by other lienholders.

ADDITIONAL INSTRUCTION FOR PERSONS POSTING MOTOR VEHICLES, OTHER CHATTELS, OR LAND LOCATED OUTSIDE NORTH CAROLINA

II. MOTOR VEHICLES

Liens on motor vehicles registered in North Carolina are established on the title certificate issued by the North Carolina Department of Motor Vehicles. Thus, we will need this certificate with our lien properly noted in the lien block.

Unless the court waives this requirement, you will also need to provide a written appraisal by a licensed automobile dealer or appraiser, on letterhead stationary.

Ordinarily the court will not accept a vehicle on which there is a prior lien, but if it does the judge may require evidence of the pay-off balance of the prior lien.

Since a motor vehicle can be destroyed, the court may require an insurance policy naming it as loss payee to the extent of the bond.

III. LAND LOCATED IN OTHER STATES

Because the court does not generally have expertise in the requirements of other states as to documents necessary for the creation of a lien, we will usually require a certification from an attorney licensed in that state that the property has been properly posted so as to secure the appearance bond. See Section I, above, as to required evidence of value. Our Clerk of Court, Dennis P. Iavarone, should be the trustee of any trust instrument, regardless of where the property is located.

IV. AIRCRAFT, BOATS AND OTHER CHATTELS

Again, we will require evidence of ownership, evidence of value and documents to constitute the lien as appropriate for the particular chattel. The documentation must be recorded in the proper registry, such as the Secretary of State's office. We will need an attorney's certification of each of these requirements.

DIRECTIONS FOR CANCELLING PROPERTY BONDS

Local Criminal Rule 10.2 shall govern the procedure for cancelling property bonds.

In the event a deed of trust is used to secure an appearance bond for a defendant, the grantor of the deed of trust is responsible for preparing and supplying the clerk with documentation necessary to cancel the deed of trust within fifteen (15) days of the date that the conditions of the appearance bond and deed of trust are satisfied. Grantor shall also be responsible for recording any documentation necessary to cancel the deed of trust and for

payment of any costs associated with such cancellation. Failure of the Grantor to comply with these requirements shall relieve the clerk of any responsibility to cancel the deed of trust. Local Criminal Rule 10.2, EDNC.